United Nations CERD/C/KGZ/CO/8-10

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined eighth to tenth periodic reports of Kyrgyzstan*

1. The Committee considered the combined eighth to tenth periodic reports of Kyrgyzstan (CERD/C/KGZ/8-10), submitted in one document, at its 2618th and 2619th meetings (see CERD/C/SR.2618 and 2619), held on 24 April and 25 April 2018. At its 2632nd meeting, held on 3 May 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the eighth to tenth periodic reports of the State party, which included responses to the concerns raised by the Committee in its previous concluding observations (CERD/C/KGZ/CO/5-7). The Committee also expresses its appreciation for the constructive dialogue with the State party's delegation.

B. Positive aspects

3. The Committee welcomes the following measures taken by the State party:

(a) The efforts to reduce the number of stateless persons during the period 2014–2017, including through the reduction, from five to three years, of the residency requirement for naturalization for recognized refugees;

(b) The implementation of the National Sustainable Development Strategy (2013–2017);

(c) The development of the Policy Framework on Strengthening National Unity and Inter-Ethnic Relations in the Kyrgyz Republic for the period 2013–2017, and the creation of the State Agency for Local Government Affairs and Inter-Ethnic Relations to implement the 36 priority measures identified in the Policy Framework.

C. Concerns and recommendations

Applicability of the Convention

4. While noting the State party's affirmation that the Convention is directly applicable in the domestic legal system, the Committee expresses its concern about the lack of examples of cases of racial discrimination where the provisions of the Convention have been invoked in, or applied by, domestic courts (art. 1).

* Adopted by the Committee at its ninety-fifth session (23 April–11 May 2018).

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5. **The Committee recommends that the State party redouble its efforts to ensure that judges, prosecutors and lawyers are trained on the provisions of the Convention in order to enable them to apply it in relevant cases. The Committee requests the State party to include in its next periodic report specific information on cases of application of the Convention by domestic courts and access by individuals to remedies for violations of rights contained in the Convention.**

National human rights institution

6. The Committee is concerned that the Office of the Ombudsman of the Kyrgyz Republic (*Akyikatchy*) is still not in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Committee is also concerned about the low number of complaints of discrimination on the grounds of race or ethnicity submitted to the Office (art. 2).

7. **The Committee recommends that the State party accelerate the legislative process aimed at bringing the Office of the Ombudsman fully into compliance with the Paris Principles. The Committee also recommends that the State party take effective measures to raise awareness about the work carried out by the Office and the possibility of lodging complaints of racial or ethnic discrimination, and ensure that it is equipped with the necessary resources to discharge its role efficiently. The Committee refers the State party to its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention.**

Human rights defenders and civil society organizations

8. The Committee is concerned about the increasing number of incidents of harassment of civil society organizations, human rights defenders and journalists, including those monitoring and reporting on the situation of ethnic minorities, which render the environment within which they operate hostile. The Committee is also concerned about the State party's continuing failure to restore the rights of Azimjan Askarov, who is serving a sentence of life imprisonment following a retrial that reportedly fell short of international standards for fair trial. The Committee is further concerned about the placement of some human rights organizations on a list of extremist organizations (art. 2).

9. **The Committee recommends that the State party:**

(a) **Ensure that all reported cases of intimidation or harassment of civil society organizations, human rights defenders and journalists are promptly and thoroughly investigated and that those responsible are held accountable;**

(b) **Take effective measures to ensure that civil society organizations, human rights defenders and journalists, including those working on the rights of ethnic minorities, are able to carry out their work effectively and without fear of reprisals;**

(c) **Effectively implement the Views of the Human Rights Committee in the case of Azimjan Askarov (CCPR/C/116/D/2231/2012), and consider pardoning him on humanitarian grounds, taking into account his age and deteriorating health;**

(d) **Refrain from placing organizations promoting and protecting human rights on the list of extremist organizations, and ensure the availability of effective due process safeguards against arbitrary inclusion on that list, including by introducing the necessary amendments to the law on combating extremist activities.**

Anti-discrimination legislation

10. While noting that the State party's delegation did not object to the Committee's recommendation to develop an anti-discrimination law (see CERD/C/KGZ/CO/5-7, para. 15), the Committee is, however, concerned about the persistent absence of general anti-discrimination legislation and of any provision specifically prohibiting racial discrimination (arts. 1 and 4).

11. **The Committee recommends that the State party adopt comprehensive anti-discrimination legislation that:**

(a) **Defines direct and indirect discrimination, includes all grounds of discrimination, and prohibits all forms of racial discrimination, in line with article 1 (1) of the Convention;**

(b) **Defines the various manifestations of racial discrimination as a punishable offence, in accordance with article 4 of the Convention;**

(c) **Provides for the possibility of adopting special measures to promote equal opportunities and address structural discrimination.**

12. **The Committee encourages the State party to seek technical assistance from the Office of the United Nations High Commissioner for Human Rights when preparing such a law, and to make full use of the Convention and the Committee's general recommendations No. 1 (1972) concerning States parties' obligations under article 4 of the Convention, No. 7 (1985) relating to the implementation of article 4 of the Convention, and No. 15 (1993) on article 4 of the Convention.**

Complaints of racial discrimination

13. The Committee is concerned about the limited number of complaints of racial or ethnic discrimination received by reception centres of the State Agency for Local Government Affairs and Inter-Ethnic Relations, reportedly due to a lack of public awareness of, or confidence in, State institutions. The Committee is also concerned about the information provided by the State party that none of the complaints submitted to the police in recent years related to racial or ethnic discrimination (arts. 4 and 6).

14. **Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee reminds the State party that the absence of complaints or legal proceedings brought by victims of racial discrimination can be indicative of legislation that is insufficiently specific, a lack of awareness of available remedies, a lack of confidence in judicial redress, fear of reprisals, or an unwillingness on the part of the authorities to initiate proceedings. The Committee therefore recommends that the State party:**

(a) **Take all steps necessary to facilitate access by minorities to justice;**

(b) **Expedite the adoption of an anti-discrimination law and disseminate it widely;**

(c) **Inform the population residing in its territory of all the legal remedies available to them and of the possibility of obtaining legal assistance;**

(d) **Provide statistical data on the number of complaints of racial discrimination and on investigations, prosecutions and convictions, disaggregated by the age, gender and ethnic origin of the victims.**

Intersecting forms of discrimination

15. Despite the steps taken by the State party to combat discrimination based on sexual orientation and gender identity, the Committee is concerned that lesbian, gay, bisexual and transgender individuals belonging to ethnic minorities are subjected to multiple forms of discrimination, and to a range of human rights violations, by State and non-State actors, often acting with impunity. The Committee is also concerned by the fact that women and children belonging to ethnic minorities are subjected to intersecting forms of discrimination on grounds of sex, race, ethnicity and age, and by the emergence of harmful practices, such as child marriage and polygamy (art. 5).

16. **The Committee recommends that the State party take the necessary measures to combat the multiple forms of discrimination faced by lesbian, gay, bisexual and transgender individuals and women and children belonging to ethnic minorities, including by mainstreaming gender, sexual orientation and gender identity**

dimensions into its measures to combat racial discrimination. The Committee also recommends that the State party take effective measures to investigate human rights violations committed, including by law enforcement officials, against lesbian, gay, bisexual and transgender individuals, prosecute perpetrators, and compensate victims. Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee calls on the State party to pay particular attention to women and children belonging to ethnic minorities, and to take effective measures to combat child marriage and polygamy.

Hate speech and ethnic profiling

17. The Committee is concerned about the prevalence of stereotyping and stigmatization of ethnic minorities, including Uzbeks, Turks, Uighurs and Mugat, and the incidence of the use of hate speech against them in the media and by public and political figures. The Committee is also concerned at the ethnic profiling by law enforcement officers of these communities, in particular of Uzbeks (arts. 2 and 4–6).

18. **Recalling its general recommendation No. 35 (2013) on combating racist hate speech, the Committee urges the State party to:**

(a) **Strengthen its efforts, including through education, culture and awareness-raising campaigns, to combat ethnic or racial stereotypes and stigma, with a view to promoting tolerance and understanding;**

(b) **Take the necessary measures to combat racist media coverage and incidents of the use of hate speech, including by politicians and other public figures, and ensure that such cases are thoroughly investigated and that, where appropriate, sanctions are imposed;**

(c) **Put an end to the practice of racial or ethnic profiling by the police, undertake effective investigations into all allegations of racial profiling, hold those responsible accountable, and provide effective remedies to victims;**

(d) **Develop training programmes on racial discrimination for law enforcement officers, including police, prosecutors and the judiciary, including on racial profiling and on proper methods of identifying, registering, investigating and prosecuting racist incidents, hate crimes and cases of hate speech.**

Inter-ethnic tensions

19. The Committee notes that the State party adopted some measures during the period under review to address inter-ethnic tensions, such as the Policy Framework on Strengthening National Unity and Inter-Ethnic Relations in the Kyrgyz Republic. It notes, however, with concern the persistence of such tensions, notably between the Kyrgyz majority and the Uzbek minority. The Committee is concerned that the Policy Framework focused on creating a national identity that is not explicitly inclusive of all ethnicities and may tend to reignite past conflicts. National identity must be built on recognition of all communities in the nation. The Committee is also concerned at the fact that ethnic minorities are underrepresented in the State Agency for Local Government Affairs and Inter-Ethnic Relations, and at the reported ineffectiveness of the Agency.

20. **The Committee recommends that the State party intensify its measures aimed at fostering an inclusive environment and enabling the different ethnic groups to live together in harmony. The Committee urges the State party to:**

(a) **Ensure that the new State policy for the period 2018–2023 entitled "I am Kyrgyzstani" does not favour any ethnic identity, inclusively addresses the concerns of the various ethnic groups present in the State party, and genuinely tackles the root causes of the ethnic tensions;**

(b) **Ensure effective participation of all concerned ethnic groups and civil society organizations, notably those working on the elimination of racial discrimination, in the design, implementation and evaluation of the State policy;**

(c) **Strengthen the structures of, and resources allocated to, the State Agency for Local Government Affairs and Inter-Ethnic Relations with a view to enhancing its effectiveness, and take steps to ensure the adequate representation of ethnic minorities at the Agency.**

Investigations into the 2010 violence

21. The Committee is concerned that investigations into the human rights violations that occurred during and in the aftermath of the June 2010 ethnic violence in the south of Kyrgyzstan were not effective, and were marred by ethnic bias and lack of respect for fair trial and due process guarantees. The Committee is particularly concerned that, while the majority of victims of human rights violations were of Uzbek origin, most of those who faced criminal prosecutions were also Uzbek. Moreover, according to the information provided during the dialogue, no compensation was provided to Uzbek victims of miscarriages of justice relating to those events. The Committee reiterates its concern about the reported use of torture by law enforcement officials and the reliance on forced confessions in courts, particularly against Uzbeks implicated in the 2010 violence, combined with the State party's failure to bring the alleged perpetrators to justice and to compensate victims.

22. **Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and its previous recommendation in this regard (see CERD/C/KGZ/CO/5-7, para. 6), the Committee calls on the State party to:**

(a) **Set up a hybrid national/international mechanism to review all cases of persons convicted in connection with the June 2010 violence;**

(b) **Effectively investigate all human rights violations with a view to bringing perpetrators to justice, commensurately punishing them if convicted, and compensating victims;**

(c) **Investigate all allegations of torture committed by law enforcement officials, prosecute and punish those responsible, and compensate the victims. In this context, the Committee urges the State party to redouble its efforts to reform the judiciary and the security and police forces.**

Socioeconomic situation of ethnic minorities

23. The Committee is concerned about the low level of enjoyment of economic and social rights by certain ethnic groups in the State party. In particular, the Committee is concerned about:

(a) The extremely low living standard of the Mugat, characterized by a high unemployment rate, low school attendance and high rates of school dropout, especially among girls, and limited access to social services, notably due to a lack of documentation, including birth certificates;

(b) Land expropriation, home demolitions and forced evictions, disproportionately affecting Uzbeks from Osh and Jalalabad and frequently carried out in the absence of due process guarantees;

(c) Discrimination against Uzbeks in access to work, and the absence of remedies for persons arbitrarily dismissed from their posts following the events of 2010 (arts. 2 and 5).

24. **The Committee recommends that the State party take effective measures, including special measures, to eliminate ethnic-based disparities in the enjoyment of economic and social rights. The Committee recommends that the State party pay particular attention to the situation of the Mugat and Uzbek ethnic minorities, and ensure their participation in the development and implementation of the new National Sustainable Development Strategy. Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party:**

(a) **Adopt and implement, with the participation of representatives of the Mugat, a well-resourced strategy to address the structural discrimination faced by the Mugat in all areas of life;**

(b) **Take immediate measures to improve the access of the Mugat to good quality and inclusive education, with a view to increasing school enrolment rates, combating school dropout, and improving educational achievement among the children concerned;**

(c) **Take effective measures to ensure that all persons, in particular the Mugat, hold identity documentation, and that all children born in the State party are swiftly issued with birth certificates, without discrimination;**

(d) **Take the necessary steps to guarantee the availability of effective legal safeguards against arbitrary land expropriation and forced evictions, and ensure that the public are aware of and able to access such safeguards, while incorporating provisions for compensation and alternative housing in domestic legislation, and ensure that house demolitions and forced evictions are used only as a last resort;**

(e) **Effectively address the difficulties faced by Uzbeks in accessing work, including through the adoption of special measures to combat ethnically motivated discriminatory recruitment practices, among other things, by disciplining or sanctioning employers using such practices, and take concrete steps to provide remedies to Uzbeks arbitrarily dismissed from their posts as a result of the events of 2010.**

Public and political participation of ethnic groups

25. The Committee notes that, in 2015, the State party introduced a quota system to improve ethnic minorities' representation in the Zhogorku Kenesh and in local authorities. It is concerned, however, that ethnic minorities, notably Uzbeks, remain significantly underrepresented in many areas of political and public life, including on local councils located in regions where Uzbeks constitute the majority of the population. Moreover, ethnic minority representation is negligible within the police and security forces as well as in the judiciary (arts. 2 and 5).

26. **The Committee recommends that the State party ensure that the quota system is effectively implemented and introduce other measures aimed at increasing the representation of ethnic minorities at all levels of public and political life in the State party. The Committee requests the State party to include in its next periodic report a detailed account of ethnic minority representation in the Zhogorku Kenesh, local authorities, executive bodies, prosecutorial offices, the judiciary and the police and security forces. The Committee refers the State party to its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.**

Access to education in minority languages

27. The Committee is concerned at the significant decline in Uzbek language instruction in schools, and the continuing inadequate provision of the technical and human resources necessary for teaching that language. Moreover, the Committee is concerned that the abolition, in 2015, of university admission tests in the Uzbek language resulted in discrimination against children whose education was partially delivered in the Uzbek language (art. 5).

28. **The Committee urges the State party to ensure that its policy on language use in education does not discriminate, directly or indirectly, on the basis of ethnicity. In particular, it recommends that the State party reintroduce Uzbek language instruction in schools and, to that end, allocate the specific budgetary resources necessary for the provision of good quality mother tongue education, and reconsider its decision to abolish university admission tests in the Uzbek language, given the discriminatory effect it has on Uzbek students.**

Stateless persons and asylum seekers

29. The Committee, while noting the measures taken to reduce the number of stateless persons in the State party, remains concerned that more than 800 cases of individuals with undetermined nationality remain unresolved. It is also concerned that existing procedures for determining statelessness do not conform to international standards. The Committee is further concerned that provisions on the deprivation of citizenship included in the draft law on citizenship lack safeguards to protect against statelessness. The Committee is concerned about information received that, under the amended provisions of the Law on External Migration, forcible deportation may be carried out without a court order if the person concerned is repeatedly charged with illegal stay (art. 5).

30. **The Committee recommends that the State party continue and strengthen its efforts to resolve the remaining statelessness cases. Recalling its general recommendations No. 30 (2004) on discrimination against non-citizens, and No. 22 (1996) on refugees and displaced persons in the context of article 5 of the Convention, the Committee also recommends that the State party:**

(a) **Establish a formal and simple statelessness determination procedure to enable all stateless persons, without discrimination, to have their status ascertained;**

(b) **Ensure that the new draft law on citizenship include safeguards against statelessness in the event of deprivation of citizenship, and provide for due process guarantees, including the possibility to appeal against decisions to remove citizenship;**

(c) **Amend the Law on External Migration to ensure that the provisions on the removal of non-citizens from its jurisdiction do not discriminate on the grounds of race, colour or ethnic or national origin and that non-citizens have equal protection against refoulement;**

(d) **Consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

D. Other recommendations

Ratification of other instruments

31. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection of All Persons from Enforced Disappearance.**

Follow-up to the Durban Declaration and Programme of Action

32. **In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.**

International Decade for People of African Descent

33. **In the light of General Assembly resolution 68/237, the Committee requests that the State party include in its next periodic report precise information on the concrete measures adopted in the framework of the International Decade for People of African**

Descent, taking into account the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

34. **The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.**

Declaration under article 14 of the Convention

35. **The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual communications.**

Amendment to article 8 of the Convention

36. **The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.**

Common core document

37. **The Committee encourages the State party to update its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.**

Follow-up to the present concluding observations

38. **In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 9 (c), 22 (a) and 28 above.**

Paragraphs of particular importance

39. **The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 11, 24 and 26 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.**

Dissemination of information

40. **The Committee recommends that the State party's reports be made readily available to and accessible by the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.**

Preparation of the next periodic report

41. **The Committee recommends that the State party submit its combined eleventh and twelfth periodic reports, as a single document, by 5 October 2022, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.**